



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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November 30, 2022

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 21-02-018:

This is the proposed decision of Administrative Law Judge Marcelo L. Poirier. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's January 12, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:jnf
Attachment

Decision PROPOSED DECISION OF ALJ POIRIER (Mailed 11/30/2022)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of LS Power Grid
California, LLC for a Permit to
Construct the Gates 500 kV Dynamic
Reactive Support Project.

Application 21-02-018

**DECISION GRANTING LS POWER GRID CALIFORNIA, LLC
A PERMIT TO CONSTRUCT THE GATES 500 KILOVOLT
DYNAMIC REACTIVE SUPPORT PROJECT****Summary**

This decision grants LS Power Grid California LLC's request for a permit to construct the Gates 500 kilovolt Dynamic Reactive Support Project.

This proceeding is closed.

1. Background

Pursuant to Section IX(B) of General Order (GO) 131-D of the California Public Utilities Commission (Commission), and Rules 2.1 through 2.5 and 3.1 of the Commission's Rules of Practice and Procedure (Rules), LS Power Grid California LLC (LSPGC) seeks a permit to construct (PTC) the Gates 500 kilovolt (kV) Dynamic Reactive Support Project (Gates Project). The main components of the Gates Project are two new static synchronous compensator units that would radially connect to the existing, adjacent Pacific Gas and Electric Company (PG&E) Gates Substation by two new single-circuit overhead 500 kV circuits, approximately 550 feet long.

The Gates Project is subject to environmental review pursuant to California Environmental Quality Act (CEQA). CEQA requires the lead agency to conduct a review to identify environmental impacts of a proposed project and ways to avoid or reduce environmental damage. In addition, pursuant to GO 131-D and Decision (D.) 06-01-042, the Commission will not approve a proposed project unless its design complies with the Commission's policies governing the mitigation of electromagnetic field (EMF) effects using low-cost and no-cost measures.

On June 10, 2021, the assigned Commissioner issued the Scoping Memo and Ruling in this proceeding and determined the initial issues and schedule of the proceeding.

Based on the initial study (IS) for the Gates Project, the Commission determined thereafter that the preparation of a Mitigated Negative Declaration (MND) was appropriate. The Commission released the Draft IS/MND for public review and comment on April 22, 2022. The public comment period closed on May 23, 2022, and the Commission received no public comments. The Commission issued the Final IS/MND on August 4, 2022.

A prehearing conference (PHC) was held on August 12, 2022, with LSPGC, the Public Advocates Office at the Commission (Cal Advocates) and PG&E in attendance. The topics considered at the PHC included the categorization of the proceeding, the remaining scope of the proceeding, need for evidentiary hearings and the remaining schedule for the proceeding. The First Amended Scoping Memo and Ruling was issued on September 16, 2022, and provided a revised scope of issues and schedule for the proceeding. The First Amended Scoping Memo and Ruling also directed LSPGC to provide an update related to impact

on the Gates Project if the Diablo Canyon powerplant operations are extended past 2025.

LSPGC filed its opening brief on September 16, 2022, and its reply brief on September 26, 2022. No other parties filed briefs. LSPGC filed the update related to the Diablo Canyon powerplant on September 26, 2022. No party filed a response to the update.

2. Issues Before the Commission

The issues to be determined in this proceeding are:

1. Is there any substantial evidence that, with the incorporation of mitigation measures identified in the Mitigation Monitoring, Reporting, and Compliance Program included in the Final MND and IS, the proposed project will have a significant impact on the environment?;
2. Was the Final IS/MND completed in compliance with CEQA?;
3. Does the Final IS/MND reflect the Commission's independent judgment and analysis?;
4. Is the proposed project designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures?; and
5. What are the proposed project's impacts on environmental and social justice communities, including the extent to which it impacts achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan?

3. Discussion

3.1. CEQA

To issue a PTC pursuant to GO 131-D, the Commission must find that the Gates Project complies with CEQA. In evaluating whether to approve a

proposed project, CEQA requires the lead agency¹ (the Commission in this case) to conduct a review to identify the potential environmental impacts of a proposed project and ways to avoid or reduce environmental damage.

The Commission has the authority to mitigate the potential environmental impacts of a proposed project through the approval of mitigation measures within the Commission's jurisdiction, unless the changes or alterations are infeasible for specific economic, legal, social, technical and other considerations. The mitigation measures are intended to reduce the potential environmental impacts of the proposed project to less-than-significant levels.

3.1.1. There is No Substantial Evidence that the Gates Project will have a Significant Impact on the Environment after the Incorporation of the Mitigation Measures Included in the Final Initial Study/Mitigated Negative Declaration

As part of its review under CEQA, the lead agency conducts an initial study to identify the environmental impacts of a proposed project and ways to avoid or reduce the environmental damage. If the initial study shows that there is no substantial evidence that a proposed project will have a significant effect on the environment, or if the initial study identifies potentially significant impacts and a proposed project proponent makes or agrees to revisions to the project that will reduce all project-related environmental impacts to less-than-significant

¹ The lead agency is the public agency which has the principal responsibility for carrying out or approving a project. The lead agency also must decide whether an EIR or Negative Declaration will be required for the project and prepare the appropriate environmental document. CEQA Guidelines (Cal. Code Regs. Tit. 14, Div. 6, Ch.3) § 15367.

levels, then the lead agency must prepare a negative declaration or MND, subject to public notice and the opportunity for the public review and comment.²

CEQA requires that, prior to approving a proposed project, the lead agency consider the MND along with any comments³ received during the public review process, and that the lead agency adopt the MND only if it finds on the basis of the whole record that there is no substantial evidence that the project will have a significant effect on the environment and that the MND reflects the lead agency's independent judgment and analysis.⁴ If the lead agency adopts an MND, CEQA requires that it also adopt a program for monitoring or reporting on the changes or conditions required to mitigate or avoid significant environmental effects.⁵

Here, we find there is no substantial evidence that the Gates Project will have a significant impact on the environment after the incorporation of the mitigation measures included in the Final IS/MND. Although the Draft IS/MND identified potentially significant impacts during and after construction of the Gates Project, all of these impacts can be mitigated to a less-than-significant level by implementation of Applicant Proposed Measures (APMs) or other mitigation measures.

The Draft IS/MND identified potentially significant impacts in the following areas: aesthetics, agriculture, air quality, biological resources, cultural and tribal cultural resources, geology, soils, paleontology, greenhouse gas emissions, hazards and hazardous materials, hydrology, public services,

² CEQA Guidelines §§ 15070-15073.

³ No public comments were submitted.

⁴ CEQA Guidelines § 15074(a)-(b).

⁵ CEQA Guidelines § 15074(d).

transportation and traffic and utilities. To avoid or reduce the potential significant impacts listed above, the Draft IS/MND identified mitigation measures and LSPGC also identified APMs.

The APMs reduce a majority of the potentially significant impacts to less-than-significant levels. However, the Draft IS/MND includes additional mitigation measures to reduce potentially significant impacts of the Gates Project to less-than-significant levels in the following resource areas: (1) Biological Resources, (2) Geology, (3) Soils and (4) Paleontology.⁶ Together, these mitigation measures will reduce the impacts to less-than-significant levels.

The Final IS/MND includes the APMs and all mitigation measures recommended in the Draft IS/MND with a few minor modifications.⁷ The Mitigation Monitoring, Compliance, and Reporting Program (MMRCP) attached to this decision as Attachment A provides a detailed implementation plan to ensure that the identified mitigation measures and APMs are properly implemented.⁸ LSPGC has committed to implement all APMs and mitigation measures identified for the environmental impacts of the construction and operation of the Gates Project.⁹ With LSPGC's implementation of the identified APMs and mitigation measures as well as compliance with the MMRCP, all

⁶ Final IS/MND at ES-3 to ES-18.

⁷ Some APMs have been superseded by Commission recommended mitigation measures, as described in the Final IS/MND. Non-superseded APMs are considered part of the Proposed Project and, upon adoption of the Final IS/MND, will be part of the Mitigation Monitoring, Compliance, and Reporting Program to assure that implementation of and compliance with the mitigation measures would be monitored and enforced by the Commission.

⁸ See Final IS/MND at Chapter 5.

⁹ LSPGC Opening Brief at 6.

project-related environmental impacts would be avoided or reduced to a less-than-significant level with the incorporation of feasible mitigation measures.

Since the circulation of the Draft IS/MND, there have been no “substantial revisions” to the IS/MND, as defined in CEQA Guidelines Section 15073.5.

3.1.2. The Final IS/MND was Completed in Compliance with CEQA

The Commission must determine whether the Final IS/MND was completed in compliance with CEQA.

LSPGC asserts that the Final IS/MND was completed in compliance with CEQA. LSPGC notes that the Final IS/MND describes the CEQA process and the steps taken to comply with those requirements, including extensive public outreach and notice efforts.¹⁰ LSPGC further contends that the Commission prepared a Final IS/MND that “identifies all potentially significant environmental impacts and, in combination with the APMs proposed by LSPGC, specifies additional mitigation measures to mitigate any potentially significant environmental impacts to less-than-significant levels.”¹¹

We find that the Final IS/MND was completed in compliance with CEQA. The Commission’s preparation of the Final IS/MND complies with the applicable CEQA requirements. Additionally, the mitigation measures set forth in the MMRCPP, including the APMs, are designed to reduce or eliminate the potentially significant environmental impacts of the Gates Project and meet the criteria set forth in CEQA Guidelines Section 15370.¹²

¹⁰ LSPGC Opening Brief at 7.

¹¹ *Ibid.*

¹² See Final IS/MND at Chapter 5.

3.1.3. The Final IS/MND Reflects the Commission's Independent Judgment and Analysis

The Commission must determine whether the Final IS/MND reflects the Commission's independent judgment and analysis.

LSPGC asserts that the IS/MND reflects the Commission's independent judgment and analysis, citing specifically to the Commission's Energy Division, which oversaw the CEQA process and development of the Final IS/MND. LSPGC also contends that the Commission will exercise its independent judgment and analysis when it reviews and considers the Final IS/MND and the proposed decision in this proceeding.¹³

We find that record shows that Final IS/MND reflects the Commission's independent judgment and analysis. The Commission's thorough and independent analysis shows that no significant environmental impacts from the Gates Project will remain after incorporation of LSPGC's proposed measures and the Commission's imposed mitigation measures.

3.2. EMF

The Commission must evaluate whether the Gates Project was designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures. Section X(A) of GO 131-D requires that applications for a PTC include a description of the measures taken or proposed by the utility to reduce the potential exposure to EMF generated by the proposed project.¹⁴ The Commission's EMF Design Guidelines for Electrical Facilities, dated July 21, 2006, provide a checklist for new substations in excess of

¹³ LSPGC Opening Brief at 8.

¹⁴ Final IS/MND at 2-42 to 2-43.

50 kV. Additionally, D.06-01-042 determined that only no-cost EMF mitigation measures are required for projects located in agricultural or undeveloped areas.

In accordance with Commission requirements, LSPGC provided a Field Management Plan with its application that indicated the specific no-cost field reduction measures taken to reduce EMF exposure.¹⁵ LSPGC asserts that Gates Project only requires no-cost measures because it is sited in an agricultural area, on land that was previously used for agriculture.¹⁶ Based on the Gates Project's location and design, LSPGC used the checklist for new substations in excess of 50 kV to demonstrate its adoption of the no-cost EMF reduction measures.

We find that LSPGC has complied with the Commission's policies governing the mitigation of EMF effects. The Gates Project is located in an agricultural area, therefore, LSPGC's inclusion of no-cost measures is consistent with Commission requirements. Therefore, the no-cost measures included in the Field Management Plan satisfies the Commission's requirements.

3.3. Impacts on Environmental and Social Justice Communities

The Commission also considers the Gates Project's impacts on environmental and social justice communities, including the extent to which it furthers any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

LSPGC asserts that the Gates Project will have minimal or no impacts on environmental and social justice communities and aligns with the Commission's environmental and social justice goals. LSPGC indicates that the nearest sensitive receptors are residences located approximately 1.8 miles from the Gates

¹⁵ A.21-02-018, Attachment E.

¹⁶ LSPGC Opening Brief, at 8.

Project site and that the evaluations in the IS/MND find that air emissions from the project would be “below all applicable thresholds of concern, and noise levels would be imperceptible and would not exceed County standards.”¹⁷ LSPGC asserts that the IS/MND reflects that the Gates Project would not result in any significant impacts at the sensitive receptor locations based or create any significant impacts within any environmental justice community.¹⁸

LSPGC emphasizes that the impacts of the Gates Project are not significant due to: (1) the large separation distance between the project site and the sensitive receptors, (2) low population density in this rural project area, and (3) the presence of an existing substation and numerous transmission lines nearby. LSPGC further contends that the Gates Project meets the Commission’s Environmental and Social Justice Action Plan goals by: (1) increasing climate resiliency by facilitating the transmission of renewable and low-carbon energy and (2) promoting economic opportunities by employing members of nearby communities during the construction of the Gates Project.¹⁹ LSPGC also cites locals benefits due to increases in tax revenues and improved electricity transmission capabilities.²⁰

Based on the record, we find that the Gates Project is consistent with the goals of the Commission’s Environmental and Social Justice Action Plan. The Gates Project supports Goal 4 by enhancing climate resiliency and Goal 7 by creating high road careers.²¹

¹⁷ *Id.* at 9; Final IS/MND at 3.3-23, 3.21-7 and 3.21-16.

¹⁸ LSPGC Opening Brief at 10.

¹⁹ LSPGC Opening Brief at 10.

²⁰ *Ibid.*

²¹ Environmental and Social Justice Action Plan (April 2022) at 23-24.

4. Minor Project Refinements

The Commission's Energy Division may approve requests by LSPGC for minor project refinements that may be necessary due to the final engineering of the project, so long as such minor project refinements are located within the geographic boundary of the study area of the Final IS/MND and do not:

(1) result, without mitigation, in a new significant impact based on the criteria used in the Final IS/MND; (2) substantively conflict with any mitigation measure or applicable law or policy; or (3) trigger an additional discretionary permit requirement.

A minor project refinement should be strictly limited to a minor project change that will not trigger other discretionary permit requirements, that does not increase the severity of an impact or create a new impact, and that clearly and strictly complies with the intent of the mitigation measure. LSPGC shall seek any project changes that do not fit within these criteria by a petition to modify today's decision. A change to the approved that has the potential for creating significant environmental effects will be evaluated to determine whether supplemental CEQA review is required.

Any proposed deviation from the approved project and adopted APMs or mitigation measures, including correction of such deviation, shall be reported immediately to the Commission and the mitigation monitor assigned to the construction for their review and Commission approval.

5. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Poirier in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

6. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Marcelo L. Poirier is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. All environmental impacts related to the Gates Project are less than significant or reduced to less-than-significant levels with incorporation of feasible mitigation measures identified in the MMRCP.
2. With the implementation of the APMs and mitigation measures identified in the MMRCP of the Final IS/MND, the potentially significant impacts to aesthetics, agriculture, air quality, biological resources, cultural and tribal cultural resources, geology, soils, paleontology, greenhouse gas emissions, hazards and hazardous materials, hydrology, public services, transportation and traffic and utilities will be reduced to less than significant levels.
3. The Gates Project is designed in compliance with the Commission's policies governing the mitigation of EMF effects.
4. The Gates Project is located in an agricultural area.
5. The Gates Project is consistent with the goals of the Commission's Environmental and Social Justice Action Plan.
6. No comments on the Final IS/MND were received during the public review period.
7. The Commission has reviewed and considered the information contained in the Final IS/MND.
8. The Final IS/MND complies with CEQA.

Conclusions of Law

1. LSPGC should be granted a permit to construct the Gates Support Project in conformance with the mitigation measures and APM include in the MMRCPP attached to this order.
2. With the implementation of the MMRCPP, there is no substantial evidence that the Gates Project will have a significant impact on the environment.
3. The Final IS/MND reflects the Commission's independent judgment and analysis.
4. The Commission's preparation of an MND was supported by substantial record evidence.
5. The Final IS/MND was completed in compliance with CEQA requirements.
6. The Commission should adopt the Final IS/MND in this decision.
7. This order should be effective immediately.
8. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. LS Power Grid California LLC's is granted a permit to construct the Gates 500 kilovolt Dynamic Reactive Support Project in conformance with the mitigation measures attached to this order.
2. The Final Mitigated Negative Declaration for the Gates Project is adopted.
3. The mitigation measures and applicant proposed measures included as part of the Final Mitigated Negative Declaration and the Mitigation Monitoring, Reporting, and Compliance Plan attached to this order as Attachment A, are adopted.

4. Application 21-02-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A :
Final Mitigated Negative Declaration and the
Mitigation Monitoring, Reporting, and Compliance Plan